



Unlocking Growth

Need for stronger PPP frameworks in infrastructure development

By Amit Kapur, Partner, JSA

The past three decades of experience in infrastructure development and public-private partnership (PPP) in India has established the necessity for constant regulatory oversight and contract management to identify and resolve hurdles in a timely and holistic manner – given its multiple implications across finance, consumer service, environment protection, safety, etc. We seem to be missing a robust institutional mechanism equipped to fulfil the constitutional mandate for governance to maximise the welfare of the people while ensuring against common detriment due to the concentration of wealth and means of production (Articles 38 and 39 of the Indian Constitution). Such a mechanism must be mandated and equipped to apply “systems-thinking” with dynamic processes and feedback loops. The goal must be to constantly distil and propagate learnings from successes and failures of PPP projects into (a) auction and contract design (given that long-term infrastructure contracts are inherently incomplete and susceptible to unforeseen changes); (b) the regulatory architecture; (c) contract management (in the web of inter-related contracts managed by constrained state capacity also called “isomorphic mimicry”); and (d) dispute avoidance/resolution mechanism.

Let us break this down. All economic development and growth eventually is premised on the factors of production in our economy – land, labour, capital, and technology and innovation. As such, the said institutional mechanism must keep a sharp focus on removing barriers obstructing any of these factors in actualising our economic potential. A stronger alignment across regulatory frameworks, capital markets and information systems

with the stakeholder community will be invaluable in this effort.

Ironically, stranded capital constraints are inadvertently created and perpetuated by those who seek capital investment. Distrusting partners (public/private) negotiate and conduct themselves focusing on “watching” their own back rather than ensuring the efficient implementation of projects and securing the desired welfare outcomes.

This issue is universal. At the recently convened 10th United Nations Economic Commission for Europe International PPP Forum in Barcelona, a question arose: Why does private capital not flow at the scale required for sustainable infrastructure, despite the proliferation of instruments like blended finance, green bonds and carbon markets?

One of India's leading thinker-practitioners in the field, Dr Arvind Mayaram, has argued that there is no absence of capital, and that the constraint is in how it is organised. Due to linear financial architecture, capital enters at the beginning of a project and remains locked in even as risks decline over time. Consequently, while infrastructure is dynamic, financing remains static. Public capital stays invested longer than necessary, while private capital enters later than it could.

Often, well-conceived PPP projects with value for money propositions fail the test of the third “P” (that is, partnership), since invariably parties work with distrust, adopting “not-in-my-backyard” strategies. There is little effort to bridge the philosophical and instinctive divergence. The public sector pursues various non-economic (freebies), social and

political objectives that erode economic viability of the project, and expects the private partner to understand and align. The private sector is driven to outperform goals to enhance profitability – at times sacrificing non-economic goals.

The missing “P” (people) becomes most conspicuous by its absence with participants losing sight of the welfare of the consuming public and economic growth, which recede into the background. The cost of all inefficiencies (such as denial of facilities, excessive pricing and poor quality) is loaded on the taxpayer (through subsidies) and/or rate payer (hapless consumer).

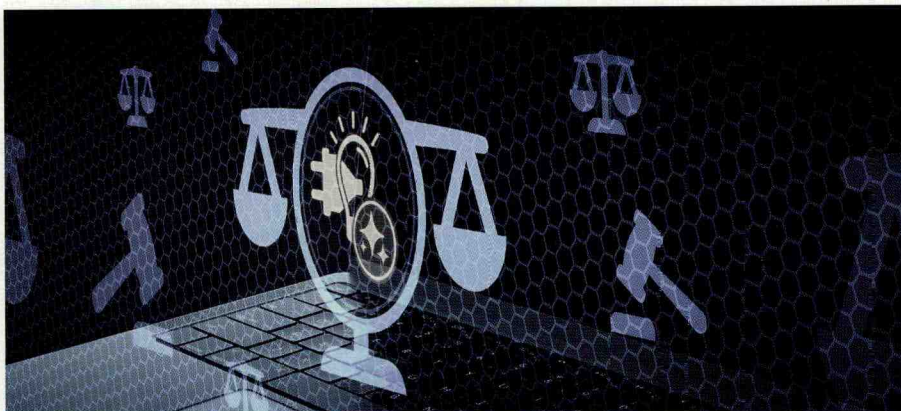
Let me share two recent instances that demonstrate this painfully. In a judgment of August 2025, the Supreme Court of India found, after hearing governments, regulators and power sector entities (public and private), that admitted unpaid dues worth over Rs 2,700 billion had been accumulated as deferred recovery by various regulators across India by not doing their job. Spread across an annual supply of around 1,500 billion units, it works to average additional dues of Rs 1.80 per unit of electricity. The cost of deferring this results in another interest cost burden of around 18-20 paise per unit, besides lulling consumers into a belief that they are consuming a much cheaper service than reality. The court granted five years for this amount to be recovered, starting on April 1, 2024 (in effect three years and seven months), which, at the request of some regulators, has been extended to seven years (in effect five years and seven months). In the DND Flyway Concession case, the Supreme Court, in December 2024 upheld the High Court's decision striking down

the toll clause as unlawful due to excess recovery and conflict of interest in contract design.

An even larger issue is pending (and perhaps lost in the docket) in the Supreme Court in a public interest litigation filed in 2022 and last heard effectively in November 2023 questioning the fiscal prudence of various political parties/governments announcing and distributing “freebies” at great cost to the citizen/economy. Similar stories exist across all infrastructure sectors – in disputed claims pending before courts and arbitrators, accumulating pointless costs to the economy.

Some facets that, if addressed through the institutional mechanism and its mandate, will go a long way toward resolving these issues:

- Most auctions/contracts do not link the changing risk profile of a project with the reward over an asset's life. Fair risk allocation in a dynamic contract with efficient contract management is imperative. The focus must be to link yield on capital invested to risk profile, removing barriers for capital to enter and exit across the asset life cycle, to avail of the benefits of circular finance. Private capital must enter at higher-risk stages (to earn the risk-commensurate rewards), and exit as risks (and hence the reward) decline, to be redeployed in new projects. Infrastructure investment trusts have enabled operational infrastructure assets to access capital markets and attract long-term investors.
- Effective contract management requires building “state capacity” and moving away from blind adherence to inflexible standard form contracts.
- Policy and regulatory frameworks must be empowered and made responsible to act proactively (through early warning systems and collaborative risk sharing) to safeguard against crippling financial impact of delays on project economics. This is particularly important for resolving any unforeseen changes in a timely manner – availing of options like reset, renegotiation, dispute resolution and rebid.



- Cost of delays (interest) in India is 10-14 per cent per annum, often at compounded rates, and at times leading to value-eroding bankruptcies. The Kelkar Committee's recommendations (2015) to rejuvenate PPP in infrastructure are yet to be implemented. The 2018 amendment to the Specific Relief Act, which requires establishing and operationalising special courts for fast-tracking decisions on infrastructure disputes (in one year), remains a paper promise.
- One of the major impediments to efficient financing is the asset-life (25-50 years) to debt-tenure (6-10 years, including construction period moratorium) mismatch.

With an ambitious goal of around \$2 trillion for infrastructure development (National Infrastructure Pipeline) and foreign funds flowing out, this should be a key priority for the Cabinet Committee on Economic Affairs and the Forum of Indian Regulators (FoIR). We have not been able to evolve and enforce a regulatory concordant at the FoIR between regulators of financial institutions (Reserve Bank, insurance and pension) and regulators governing borrowers (such as electricity, aviation, ports, highways and metro rail). Regulators and governmental agencies should collaboratively resolve system risks and barriers to:

- Manage risk collaboratively and enhance creditworthiness.
- Secure timely payment with suitable enforcement mechanisms.
- Leverage long-term patient capital (debt, equity and other instruments)

for tenures of 20 years or more.

What they all forget is that by abdicating their responsibility and looking away, they invite judicial intervention on policy choices, which can be disruptive.

For effective governance and regulation in the days of fast-paced technological changes, we must embrace technological advances with guardrails. The OECD Ministerial Council's Recommendations for Agile Regulatory Governance to Harness Innovation commends four pillars (published in 2025) that must be carefully considered while designing our future Indian regime:

- Adjusting regulatory management tools to ensure that regulators are fit for the future.
- Establishing institutional foundations for cooperation within and across jurisdictions.
- Ensuring governance frameworks to enable the development of agile and adaptive regulation.
- Adapting regulatory enforcement activities to evolving needs.

We must start with adopting a “systems thinking” approach in our professional education pedagogy besides investing strongly in applied research so that the workforce is ready to serve the imperatives of Articles 14 (reasonableness), 21, and 39(b) and (c) of the Constitution of India – maximising public welfare in a viable manner while acting in public trust to safeguard the “common man”. ■

(The views expressed in this article are the personal views of the author.)